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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/804,819	03/19/2004	Markus Gilch	2003P02190 US	7098

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EXAMINER

FORD, JOHN K

ART UNIT	PAPER NUMBER
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3753

DATE MAILED: 06/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/804,819	Applicant(s) GILCH ET AL.	
	Examiner John K. Ford	Art Unit 3753	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 16-30 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 16-30 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|----------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____ |

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The disclosure is objected to because of the following informalities: please eliminate on page 1, last paragraph, the references to specific claim numbers. It is more than likely that these claims will not exist, in their present form, if this application issues.

Appropriate correction is required.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 16, 21, 23 and 27 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Steinmann (USP 4,508,021) or Anderson (USP 3,028,800) or DE 4100817 (supplied by applicant un-translated).

In each of these references (Steinmann (USP 4,508,021) or Anderson (USP 3,028,800) or DE 4100817 (supplied by applicant un-translated)), the actual value of air flowing into the air-conditioning system is measured by a sensor in each of these references that the Examiner deems to be an air mass flow sensor, because these sensors each perform the function called forth in the claims. Because applicant's

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specification contains no disclosure of precisely what constitutes an air mass flow rate sensor, the Examiner is at a loss to determine precisely which type, of a myriad of types of mass flow sensors in the prior art, to search for. If applicant doesn't agree with the Examiner on this point, he has only to look to his own specification for the lack of specificity. Please provide a translation of DE 4100817, if available to applicant.

Claims 16, 21, 23 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Steinmann (USP 4,508,021) or Anderson (USP 3,028,800) or DE 4100817 (supplied by applicant un-translated) in view of applicant's admission on page 2, lines 6-8 of the specification that the "use of air mass flow rate sensors is known in the field of motor vehicle technology for measuring the sucked-in fresh air in the intake tract."

To have replaced each of the air flow sensors in the references to Steinmann (USP 4,508,021) or Anderson (USP 3,028,800) or DE 4100817 (supplied by applicant un-translated) with the air mass flow sensor admitted to be prior art on page 2, lines 6-8 to accurately measure the mass of air entering the motor vehicle would have been obvious to one of ordinary skill in the art, since this advantageously appears to be some sort of "off-the-shelf" component. As well, the Examiner is requiring full disclosure of what exactly this admitted prior art is, to aid in further examination of this application.

Claims 17, 18, 22 - 26 and 28 - 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Steinmann (USP 4,508,021) or Anderson (USP 3,028,800) or DE 4100817 (supplied by applicant un-translated), either alone or in view of the admitted

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prior art on page 2, lines 6-8 of applicant's specification as applied to claims 16, 21, 23 and 27 above, and further in view of any one of Eguchi et al (USP 4,437,391) or Fukui et al (USP 4,352,321) or Kettner (USP 5,971,287) or Baruschke et al (USP 5,934,987).

To have used the air flow sensing system of the prior art to Steinmann (USP 4,508,021) or Anderson (USP 3,028,800) or DE 4100817 (supplied by applicant un-translated), with or without the admitted prior art air mass flow rate sensor of page 2, lines 6-8 of the specification, in any one of the systems of Eguchi et al (USP 4,437,391) or Fukui et al (USP 4,352,321) or Kettner (USP 5,971,287) or Baruschke et al (USP 5,934,987) to keep the amount of air flow from the blower a constant regardless of changing pressure conditions at the fresh air and recirculation air inlets in each of Eguchi et al (USP 4,437,391) or Fukui et al (USP 4,352,321) or Kettner (USP 5,971,287) or Baruschke et al (USP 5,934,987).

Regarding claims 17 and 28, each of Eguchi et al (USP 4,437,391) or Fukui et al (USP 4,352,321) or Kettner (USP 5,971,287) or Baruschke et al (USP 5,934,987) have these two inlet flows (external and recirculation).

Regarding claim 18, the Steinmann (USP 4,508,021) or Anderson (USP 3,028,800) or DE 4100817 (supplied by applicant un-translated) systems would each cause this to happen when placed into any one of Eguchi et al (USP 4,437,391) or Fukui et al (USP 4,352,321) or Kettner (USP 5,971,287) or Baruschke et al (USP 5,934,987).

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Regarding claims 22 and 29, each of Eguchi et al (USP 4,437,391) or Fukui et al (USP 4,352,321) or Kettner (USP 5,971,287) or Baruschke et al (USP 5,934,987) have these flaps controlling the external and recirculation proportions.

Regarding claims 23 - 26, each of Eguchi et al (USP 4,437,391) or Fukui et al (USP 4,352,321) or Kettner (USP 5,971,287) or Baruschke et al (USP 5,934,987) measure "characteristic variables" given that applicant has put no limits on what these are. For example, Eguchi monitors pollution using sensor 4, Fukui monitors pollution using a gas sensor 1a, Kettner, temperature and RH at various locations (2a, 2b, 3a, 3b, 5a and 5b) as well as pollution (col. 2, line 35) and Baruschke et al (USP 5,934,987), both moisture (5, 5a), pollution (6) and temperature (8, 9) to control the fresh air/recirculation air flap 1.


Regarding claim 30, the location of the mass flow sensor at the specified location is not only obvious, but is necessary, if the Steinmann (USP 4,508,021) or Anderson (USP 3,028,800) or DE 4100817 system is to have realized its respective goal of keeping the airflow constant when placed into the Eguchi et al (USP 4,437,391) or Fukui et al (USP 4,352,321) or Kettner (USP 5,971,287) or Baruschke et al (USP 5,934,987) prior art. To have placed the airflow sensor in another location would defeat the whole object or purpose behind the Steinmann (USP 4,508,021) or Anderson (USP 3,028,800) or DE 4100817 references.

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Claims 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over any of the prior art as applied to claim 18 above, and further in view of Passur (USP 2,224,407).

Passur teaches two fans, including a main fan 6 analogous to the one shown in the prior art references and a booster fan 8 and adjustable flap 19 in the fresh air duct to increase the fresh airflow and control it. To have used this type of dual fan/adjustable flap in the prior art to improve the outdoor airflow control would have been obvious to one of ordinary skill in the art.

Any inquiry concerning this communication should be directed to John K. Ford at telephone number 571-272-4911.



John K. Ford
Primary Examiner